



New Jersey Department of Children and Families Policy Manual

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Court Orders 5-10-2010

CP&P may petition the court for:

- Order to Investigate under N.J.S.A. 30:4C-12, when the parent refuses to cooperate or impedes an investigation and the referral of abuse or neglect alleges that the child needs protection.
- An Order for Protective Services (supervision) under N.J.S.A 30:4C-12, when the child requires protective services, which do not necessitate his removal from his home, and the parent refuses to cooperate with CP&P in the provision of such services. This would occur in situations requiring medical or psychiatric treatment of the child, services to prevent the withholding from or to ensure the provision of medically indicated treatment to a disabled child with a life threatening condition, educational services, or services to ameliorate family problems that endanger the child's physical and/or emotional well-being.
- An Order for Protective Services Custody, when:
 - a) CP&P determines that a child's safety requires removal; a Safety Protection Plan is not viable (N.J.S.A. 9:6-8.28 or 30:4C-12);
 - b) CP&P removes a child from his home without obtaining a court order (N.J.S.A. 9:6-8.29), when there is imminent danger to the life or health of the child. The Division is required to file a complaint and a hearing must be held in Family Court within two court days following the removal. (N.J.S.A. 9:6-8.30) See II C 1301.4; or
 - c) the child is in need of protection and no parent or legally responsible caregiver can be found. (N.J.S.A. 30:4C-12).
- An Order to Show Cause and Verified Complaint, when CP&P seeks a court order to remove a child and place the child out of home.
- Special Orders, when the conditions of the case require special relief in the form of probation supervision of the parent or guardian, N.J.S.A. 9:6-8.56, therapeutic services for the parent, N.J.S.A. 9:6-8.58, or setting forth condition of behavior on the part of the parent, such as: (a) staying away from the home; (b) allowing

visitation of the child; (c) abstaining from offensive conduct against the child or person having custody of the child; (d) giving proper attention to the home; and (e) refraining from acts which tend to make the home not a proper place for the child. (N.J.S.A. 9:6-8.55)

- An Order of Protection may be considered as an option during the investigation or ongoing supervision when domestic violence is suspected or present. Consult the DAG when considering an Order of Protection. See [CP&P-VIII-B-1-100](#), Domestic Violence ([CP&P-VIII-B-1-100.11](#), Order of Protection), and the DCF [Domestic Violence Protocol](#), “Child Protection Laws,” in Section II.
- Guardianship under N.J.S.A. 30:4C-15 (a) to (d) when:
 - a) after reasonable efforts to locate the parents of a child who appears to have been abandoned, CP&P should act to terminate parental rights as soon as possible;
 - b) after repeated and consistent efforts by CP&P to rehabilitate the family situation have resulted in an insufficient improvement to insure the child’s safety within the family and after one year no further efforts or resources available can reasonably be expected to be successful, CP&P may act to terminate parental rights if an alternate permanent plan can be made. See [CP&P-IV-C-1-500](#).
- The Family Part Judge may enter an order through the Child Placement Review process or following CPS litigation recommending that CP&P initiate a proceeding for the termination of parental rights. If CP&P disagrees, CP&P has 30 calendar days from the order to report in writing to the court its disagreement with the recommendation.

CP&P may agree with the recommendation for termination or on its own initiative determine that parental rights should be terminated so that the child may be placed for adoption. In either instance, CP&P has 45 calendar days from the order or CP&P decision to pursue guardianship to report to the court about any necessary searches. CP&P has 90 calendar days from the submission of the progress report to file the guardianship complaint.

Appeals of Lower Court Decisions in the Appellate Division of Superior Court and the New Jersey Supreme Court 4-22-94

When the Superior Court (Family Part) and Appellate Division do not rule in favor of the Division, the following uniform policy and procedures will govern appeals of such decisions in all Child Protective Services (CPS) cases brought pursuant to [N.J.S.A. 30:4C-1 et seq.](#) and [N.J.S.A. 9:6-1 et seq.](#)

Appealing Adverse Trial Court Rulings 4-22-94

When the Division receives an adverse decision in the lower court (Superior Court-Family Part), the Worker, Supervisor, Litigation Specialist and Office Manager (i.e., the Local Office Manager if it is a CPS litigation or an adoption case also involving CPS litigation) or designee shall confer with the Deputy Attorney General (DAG) handling the

litigation regarding the appropriateness of pursuing an appeal to the Appellate Division of the Superior Court. It is to be understood, however, that the DAG is not authorized to make any final decisions as to whether or not an appeal should be filed. Rather, as with all litigation matters, the Division of Law (through either the Assistant Attorney General in Charge of Appeals, Trenton or the Deputy Director, Newark Office, Division of Law) will be responsible for making the final decision whether an appeal should be filed, taking into consideration the recommendations of the CP&P Director or his designee and trial counsel. Since the Division will have 45 days in which to appeal the matter to the Appellate Division of the Superior Court, the initial conference/meeting, as well as all subsequent Division actions, should be taken in an expeditious manner in consideration of the time constraints.

After conducting a thorough review of the case, the recommendation of the above-cited conferees (i.e., written by the Office Manager), along with the entire litigation case file, shall be forwarded immediately by the Office Manager to the Area Director, with a copy of the recommendation to the Assistant Area Director. The recommendation should also include conflicting opinions in situations when the DAG wants to appeal the matter and CP&P staff disagrees, or vice versa. The conflicting opinions of the DAG and Division (as represented by the Office Manager) can either be reported in the recommendation and/or written separately and attached to the recommendation. The decision of the Area Director, including the preliminary recommendation of the DAG, is forwarded to the CP&P Director, or his designee. The CP&P Director, or his designee, in consultation with the Assistant Director, Office of Legal Affairs and Assistant Director, Office of Program Operations, shall make a recommendation to the Assistant Attorney General in Charge of Appeals in Trenton or the Deputy Director, Newark Office, Division of Law whether or not the Attorney General should initiate an appeal of the lower court's decision to the Appellate Division of the Superior Court.

Appealing Adverse Decisions of the Appellate Division 4-22-94

If the Division loses a decision in the Appellate Division, the same procedure described in II C 1402.1 for appealing lower court decisions is followed, with one exception. The CP&P Director, or his designee, shall provide the Deputy Commissioner, Department of Children and Families, with a case summary that is prepared by the Local Office Manager which contains a copy of the Appellate Division's decision and the recommendations of the Division and the preliminary recommendation of the DAG representing the Division. After providing proper notice to the Deputy Commissioner, the CP&P Director shall make the final recommendation to the Division of Law whether or not to seek further review of the matter by the Supreme Court of New Jersey. A final decision as to any appeal to the Supreme Court of New Jersey will be made by the Director of the Division of Law, or in appropriate cases, the Attorney General. Division staff should be aware that where the Appellate Division decision is unanimous, the Division has only twenty (20) days in which to seek Supreme Court Review. Where the decision is split, the 45-day review period applies and where the decision reviewed by the Appellate Division is interlocutory and not final, then a fifteen (15) day filing deadline applies.

1402.3 Emergent Applications/Appeals 4-22-94

In all emergent matters, where there is insufficient time to follow the procedures cited in II C 1402.1 and 1402.2, the participants to the appeals process (i.e., Worker, Supervisor, Litigation Specialist, Office Manager or his or her designee and DAG) shall utilize conference calls and/or fax and electronic mail in order to expedite the review and decision-making process (i.e., contacting the CP&P Director, or his designee, through the Area Director). If the CP&P Director or his designee is unavailable, the Area Director shall contact the Deputy Director and/or Assistant Director of the Office of Legal Affairs. If there is insufficient time to obtain written approval for an appeal, a verbal decision whether or not to recommend that the Attorney General file an appeal must be obtained from the CP&P Director, or his designee. As previously noted, before the CP&P Director makes a final recommendation to appeal a matter to the Supreme Court, he must first notify the Deputy Commissioner, Department of Children and Families, or his or her designee. All subsequent court decisions shall be disseminated expeditiously by the Local Office Manager and/or DAG to all participants in the appeal process. Although the Division should utilize the expedited appeals process described above in emergency situations where there is insufficient time to follow the normal appeals process, some situations may require an even more immediate decision. For example, when the Division loses a guardianship case at the trial level, and an immediate appeal of the court decision is necessary based on evidence that the child may be harmed if returned home. In these situations, if the Deputy Attorney General handling the case, after conferring with the Local Office Manager and/or designee, determines that an immediate appeal is needed to stay the court decision and will so recommend to the Assistant Attorney General in Charge of Appeals in Trenton or the Deputy Director, Newark, the Local Office Manager and/or designee must seek the approval (verbal if there is insufficient time for written approval) from the CP&P Director or his designee, or Deputy Director, and/or Assistant Director, Office of Legal Affairs if the Director or his designee is not available. In the rare case where CP&P personnel at the court hearing do not have time to call or cannot contact the necessary Division staff, then the CP&P staff present at the court shall have the authority to recommend to the Division of Law (through the DAG) at that particular time, based on their best judgment, whether an appeal and stay of the court decision should be pursued. The CP&P staff member, through the Office Manager, is then responsible to advise the CP&P Director as to whether or not the matter was appealed and, if appealed, the results of the court decision.

1403 Jurisdiction of Court Order 4-22-94

New Jersey orders giving CP&P custody may in fact be enforceable outside of New Jersey under the Full Faith and Credit Clause, the Uniform Child Custody Jurisdiction Act (enacted in many states) or other state law. Whether or not it is practical to attempt enforcement in another state as opposed to a simple referral to an out-of-state agency is determined on an individual case basis. When it is determined that a referral to an out-of-state agency is appropriate, CP&P immediately contacts the child welfare agency

and requests its assistance. If it is agreed that court action is needed to protect the child, the child welfare agency where the child now resides may institute such action as permitted under the laws of that state. CP&P may appear in court in that state, but may not institute legal action there.

1404 Duration of Court Orders 1-14-2013

Court orders may be granted for an initial period of 12 months under N.J.S.A. 9:6-8.54b, with extensions for additional periods of up to one year. Court orders may be granted for up to 6 months under N.J.S.A. 30:4C-12. The court may also grant extensions to court orders under N.J.S.A. 30:4C-12 upon application by CP&P. Each Local Office is required to maintain a tickler system as a reminder of expiration dates of court orders. Cases are reviewed at least 6 weeks prior to expiration and a determination made as to whether an extension of the order or another type of court action is needed. If the determination is made to return the child to his or her home, the Deputy Attorney General is notified in writing as outlined in the PRS Litigation Manual. If an extension of the order is sought, an affidavit outlining facts and occurrences since the issuance of the previous order which form the basis for the request for extension is submitted to the DAG. There is no statutory limit on the number of extensions that may be granted; however, if a child has been under CP&P custody in protective services for one year and cannot be safely placed with his family, consider termination of parental rights, unless there is concrete reason to believe a safe return is possible within the next six months. Services are goal-oriented and if with the agency and court involvement, the situation has not improved within one year sufficiently to permit a child's return, then the case goal is re-evaluated and other permanent plans made if possible. See II A 1302.4, Reasonable Efforts to Reunify.

If the determination is made to return a child prior to the expiration of the order, with prior notice and agreement of the DAG, the court is advised by letter 10 days before the scheduled return. The court is notified that CP&P plans to return the child by the date scheduled unless the court objects. In no case does CP&P return a child if the court objects. See [CP&P-IX-L-1-500](#), Litigation Manual, regarding requirements to comply with court orders.

Including Other Children in Complaints 7-6-87

When removing a child, or taking other court action in regard to PRS families, the Worker should consider the other children in the home. The law allows CP&P to include siblings in a complaint when less than all are the subject of the complaint.

Assignment of a Law Guardian 7-6-87

Each child coming to the attention of the court under N.J.S.A. 9:6-8.21, et seq. and 30:4C-12 or 15 has a Law Guardian assigned to represent him in the legal proceedings. In cases brought only under N.J.S.A. 30:4C-12 or 15, the court appoints an attorney to represent the child.

Access to Records 7-6-87

CP&P must allow the Law Guardian access to the information in the child's record or family records which CP&P intends to use in the court proceedings and also that information collected during the investigation of the complaint leading to the court proceedings, Attorney General Opinion M75-1994. CP&P may request a limit of discovery as outlined in II A 1207.4 relative to records requested by the Law Guardian.

Visiting the Child 7-6-87

The Law Guardian must be told where his client is placed, if that information is requested. The Law Guardian may visit the child upon request. The time, location, and whether the Worker accompanies the Law Guardian will be at the discretion of CP&P.

Foster Home Complaints 7-6-87

A Law Guardian may not visit a foster home for the purpose of evaluating that home. If a Law Guardian has a complaint about a foster home, he should notify the Local Office Supervisor of that complaint. The Worker will promptly investigate and report his findings to the Law Guardian and the Area Director via supervisory channels.

Legal Authority and Responsibilities of CP&P to Respond to Allegations of Abuse and Neglect 12-22-97

Under Title 9 and Title 30 of the New Jersey statutes CP&P investigates allegations of abuse or neglect and requests for services made either by clients themselves or on behalf of others.

Once the investigation has been completed, CP&P must be able to identify the conditions in the family which authorize service delivery. The authority of CP&P to provide services is found in Title 9 and Title 30. These statutes set forth conditions under which CP&P may provide services and identify those conditions for which CP&P is authorized to seek court relief.

Authority to Provide Services 12-22-97

N.J.S.A. 30:4C-11 (Application for Care or Custody)12-22-97

N.J.S.A. 30:4C-11 authorizes CP&P to provide needed services at the request of a parent, relative, interested agency, or public official, person standing in loco parentis (i.e., anyone having physical custody of the child), a person or association... having special interest in such child, or the child himself. However, before services may be provided, CP&P must verify that:

- the welfare of the child will be endangered unless proper care or custody is provided;
- the needs of the child cannot properly be provided for by financial assistance available under State Law (e.g., welfare);

- there is no legally responsible person available who is willing and able to provide for the child; and
- if the child suffers from a mental or physical disability requiring institutional care, he is not immediately admissible to any public institution providing such care.

N.J.S.A. 30:4C-12 (Complaint, Investigation, Hearing, Order Making Child Ward of the Court) 12-22-97

N.J.S.A. 30:4C-12 authorizes CP&P to provide services if it finds that the parent or parents, guardian, or person having custody and control of any child within this state is grossly immoral or unfit to be entrusted with the care and education of such child, or fails to provide the child with proper protection, maintenance and education, or is of such vicious, careless, or dissolute habits as to endanger the welfare of such child. In order to make such a finding, CP&P must be able to show that the child has suffered demonstrable harm.

Title 9 2-10-94

Title 9 authorizes CP&P to provide services whenever a child is found to be abused or neglected as defined by N.J.S.A. 9:6-8.9 and 9:6-8.21. The definition below is from N.J.S.A. 9:6-8.21c.

“Abused or neglected child means a child less than 18 years of age whose parent, guardian,” ...as defined below Actual Abuse “inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; Risk of Injury creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; Sexual Abuse commits or allows to be committed an act of sexual abuse against the child; or Neglect a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as result of the failure of his parent or guardian”, ...as defined below... “to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; or Abandonment a child who has been willfully abandoned by his parent or guardian”, as defined below...; “or Excessive Restraint a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child’s behavior is harmful to himself, others or property; or Inappropriate a child who is in an institution,” other Institutionalization than a day school...“, and has been placed there inappropriately for a continued period of time with the knowledge that the

placement has resulted or may continue to result in harm to the child's mental or physical well-being; or who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for this reason alone be considered to be abused or neglected.

Parent or Guardian Defined 10-27-95

N.J.S.A. 9:6-8.21a. defines a parent or guardian as "any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L. 1974, c.119 (C.9:6-8.21)."

Definition of Sexual Abuse 12-22-97

N.J.S.A. 9:6-8.84 defines "sexual abuse" as "contacts or actions between a child and a parent or caregiver for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

- a. the employment, use, persuasion, inducement, enticement or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;
- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children or incest; or
- c. sexual penetration and sexual contact as defined in N.J.S.A. 2C:14-1 and a prohibited sexual act as defined in N.J.S.A. 2C:24-4."

N.J.S.A. 2C:14-1c (criminal law) defines "sexual penetration" as "vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime."

N.J.S.A. 2C:14-1d defines "sexual contact" as "an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present."

N.J.S.A. 2C:14-1e defines "intimate parts" (used in the definition of "sexual contact") as the following body parts: "sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person."

N.J.S.A. 2C:24-4 states: "prohibited sexual act means:

- a. sexual intercourse; or
- b. anal intercourse; or
- c. masturbation; or
- d. bestiality; or
- e. sadism; or
- f. masochism; or
- g. fellatio; or
- h. cunnilingus; or
- i. nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction."

Definition of Child 12-22-97

"Child" means any person less than 18 years of age, except as otherwise provided by N.J.S.A. 9:17B-2f. (N.J.A.C. 10:133-1.3)

(N.J.S.A. 9:17B-2f refers to services provided to "dependent and neglected children," including "persons between 18 and 21 years of age who seek to avail themselves of such services and who are enrolled in a school or training program below college level or who require a course of treatment for emotionally, cognitively or physically disabled persons.")

Authority to Seek Court Relief 12-22-97

CP&P may seek a court order for investigation under 30:4C-12 whenever any of the above conditions are alleged and the parent, guardian or person having custody and control of the child refuses to allow an investigation to be conducted.

Whenever conditions described in N.J.S.A. 30:4C-12 are verified, CP&P may seek a court order for supervision or temporary custody of the child.

Whenever the conditions described in N.J.S.A. 9:6-8.21 are verified, CP&P may seek a court order for temporary custody, preliminary order for medical treatment, supervision, or an order of protection.

Whenever there is a civil or criminal adjudication of child maltreatment necessitating the removal of children previously in the care of the parent and either the circumstances predicated that removal have not changed or the Division is unable to determine that the parent is now able and willing to provide for the child in a non-abusive or non-neglectful manner, CP&P may seek a court order for investigation, temporary custody, or supervision.

CP&P may seek court relief under N.J.S.A. 9:6-8.86 to prevent the withholding of medically indicated treatment from a disabled child with a life threatening condition or to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child.

Resistance to Investigation 10-27-95

Both active and passive resistance to the investigation and the offer of protective services is common and natural. The presence of resistance should not be, in and of itself, an indication of a need for court action. The Worker should expect to utilize casework techniques to help the client understand the need for the investigation and any services required for the protection of the child. The Worker should not force, coerce, or threaten the client in order to gain the client's cooperation. The CP&P Form [26-68](#), Letter to Client Regarding Need to Cooperate with Child Protective Service Investigation, may be used to inform the client of CP&P's authority to investigate.

Other Provisions 11-21-2005

The law also provides that:

1. it is misdemeanor for any parent, guardian or other caregiver to abuse, neglect or abandon a child, N.J.S.A. 9:6-3;
2. CP&P shall maintain a 24 hour emergency telephone service for the receipt of child abuse reports, N.J.S.A. 9:6-8.12;
3. upon receipt of a report of child abuse or neglect, CP&P shall take immediate action to insure the safety of the child, N.J.S.A. 9:6-8.11;
4. CP&P shall forward a report of child abuse and neglect to the Child Abuse Registry (see definition at II A 1203.4; see also II A 1605.1) within 72 hours of receipt of the report, N.J.S.A. 9:6-8.11;
5. a non-criminal process exists for the resolution of abuse and neglect cases, N.J.S.A. 9:6-8.8 et seq.;
6. in any action before the court under N.J.S.A. 9:6-8.8 et seq., both the child and the parent(s) or guardian shall be represented by legal counsel;
7. any physician, director of a hospital or his designee involved in the examination or treatment of a child may take the child into protective custody for a period not to exceed three (3) court days when the child has suffered serious injury, the probable inference from the available information is that the injury was caused by other than accidental means, and the child would normally be returned to the custody of the person suspected of inflicting or allowing the infliction of the injury, N.J.S.A. 9:6-8.20. See [CP&P-II-B-1-800](#) for a description of CP&P role in protective custody (hospital hold) situations;
8. CP&P is required to report to the County Prosecutor those cases of alleged abuse and/or neglect that involve suspected criminal activity on the part of the child's parent, caregiver or other person as defined by

statute and regulations. See [CP&P-II-C-4-200](#) and III F Manual, N.J.A.C. 10:129-5.

In order for CP&P to meet its responsibilities, the law authorizes CP&P:

1. to file a complaint with Family Court when the conditions specified in the law exist, N.J.S.A. 30:4C-12 and N.J.S.A. 9:6-8.8 et seq.;
2. to remove any other child residing in the home in addition to the removal of one child if such removal is necessary to avoid imminent danger to his life or health, N.J.S.A. 9:6-8.33;
3. to apply to the court for a preliminary order to remove the child prior to a preliminary hearing being held when (a) removal is necessary to avoid imminent danger to the child's life or health; (b) the parent is absent or refuses to consent to the removal and (c) there is no time to hold a preliminary hearing, N.J.S.A. 9:6-8.28;
4. to remove a child from his home without the permission of the parent and without a court order prior to filing a complaint when the child is in such condition that his remaining in the home or in the custody of the parent or guardian presents an imminent danger to the child's life or health, N.J.S.A. 9:6-8.29;
5. to request and receive assistance from local and state law enforcement officials, N.J.S.A. 9:6-8.29;
6. to request from any public or private institutions, agencies or practitioners, their records past and present pertaining to a child who is a subject of a CP&P investigation of abuse or neglect. (N.J.S.A. 9:6-8.40);
7. to pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, as may be necessary to:
 - a) Prevent the withholding of medically indicated treatment from disabled children with life-threatening conditions, or
 - b) Provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child or to prevent the withholding of medically indicated treatment from disabled children with life-threatening conditions, (N.J.S.A. 9:6-8.86)
 - c) Assure that a parent or other adult in the household undergoes a substance abuse evaluation and, if necessary, receives treatment, when ordered by the court prior to returning a child to the home after having been removed due to a finding of abuse or neglect. (N.J.S.A. 9:6-8.58a)

A complete discussion of the grounds and procedures for CP&P intervention through the court may be found in the Protective Services Litigation Manual, [CP&P-IX-L-1-500](#).